

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

1704 R STREET LIMITED PARTNERSHIP
Respondent

Case No.: I-00-20380

FINAL ORDER

I. Introduction

On February 15, 2002, the Government served a Notice of Infraction upon Respondent 1704 R Street Limited Partnership. As amended, the Notice of Infraction alleges a violation of 22 DCMR 107.1, which permits the Department of Health to issue orders to owners or occupants of buildings requiring them to take specified measures to prevent rat infestation or to exterminate rats present at their property.¹ The Notice of Infraction charges that the violation occurred on January 24, 2002 at 1704 R Street, N.W. and seeks a fine of \$1,000.

Respondent filed a timely plea of Deny and I held a hearing on April 16, 2002. Norris Goins, a Department of Health inspector, appeared on behalf of the Government, and J. Andrew Chopivsky, Esq., appeared on behalf of Respondent. Based upon the testimony of the witnesses, my evaluation of their credibility and the evidence admitted into the record, I now make the following findings of fact and conclusions of law.

¹ The Notice of Infraction cites 21 DCMR 107.1 as the provision allegedly violated by Respondent. At the hearing, Respondent consented to an amendment of the Notice of Infraction to charge a violation of 22 DCMR 107.1.

II. Findings of Fact

Respondent operates an ice cream store at 1704 R Street, N.W. On January 24, 2002, Mr. Goins, accompanied by Jonathan Harvey, another inspector employed by the Department of Health, inspected the exterior of the premises. Mr. Goins observed two holes in the exterior walls of Respondent's premises that he believed were rat holes. Mr. Goins has not issued any abatement order requiring Respondent to undertake any activity with respect to rodents at the property. He testified that he believed that Mr. Harvey may have issued such an order, but he was not sure whether Mr. Harvey did so. Mr. Goins further testified that he was not sure when (if at all) any such order was issued or what it required Respondent to do. Mr. Goins' testimony was insufficient to prove the issuance or the terms of any order issued to Respondent. Because there was no other evidence of the issuance of an order, I find that the Government did not prove by a preponderance of the evidence that an order was issued to Respondent on or before January 24, 2002, the date of Respondent's alleged non-compliance with an order.

III. Conclusions of Law

The regulation at issue permits the Department of Health to "order the following things to be done" if any of them are "necessary to protect the public health:"

- (a) The vent stoppage of any rat-infested building or other structure or part thereof;
- (b) The removal from the premises of trash or refuse which may provide rat harborage;
- (c) The protection of food and garbage from rats; and
- (d) The extermination of rats on the premises by baiting or trapping, or both.

22 DCMR 107.1

The Rodent Control Act of 2000 provided that violation of an order issued pursuant to § 107.1 is a Class 1 civil infraction, punishable by a fine of \$1,000 for a first offense.² *See* 16 DCMR 3201, 3216.1(j). In order to prevail in this case, therefore, the Government must prove that a valid order was issued to Respondent, that the order required Respondent to perform one or more of the actions listed in § 107.1 and that Respondent failed to comply with that order. In this case, the Government failed to prove that any order was issued. Consequently, it has failed to prove any of the legally required elements of its case, and the Notice of Infraction must be dismissed. D.C. Official Code § 2-1802.03(c).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent is **NOT LIABLE** for violating 22 DCMR 107.1 on January 24, 2002, as alleged in the Notice of Infraction as amended; and it is further

ORDERED, that the Notice of Infraction is **DIMSISSSED WITH PREJUDICE**.

/s/ **04/17/02**

John P. Dean
Administrative Judge

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 107.1. 47 D.C. Reg. at 6339 (August 11, 2000).